

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

77:1265

In The
UNITED STATES COURT OF APPEALS
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

ZACHARY MARTIN, and
DENNIS MARTIN,

Appellants.

APPEAL FROM THE JUDGMENT OF CONVICTION IN THE UNITED
STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
NEW YORK IN INDICTMENT NUMBER 77-11

BRIEF FOR APPELLANT

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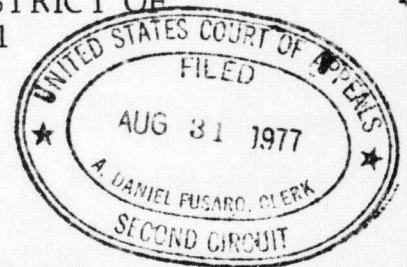


TABLE OF CONTENTS

	Page
Issues Presented.....	1
Preliminary Statement.....	2
Statement of Facts.....	3
POINT I. The destruction by the F.B.I. of the rough interview notes denied the Appellants the full protection afforded them by the Fifth and Sixth Amendments of the United States Constitution.....	8
POINT II. Due to the Appellants' drug intoxication, their statements were involuntarily given.....	12

TABLE OF CASES.

Amos v. United States, 225 U.S. 313.....	20
Blackburn v. Alabam, 36 U.S. 199.....	14
Boulden v. Halman, 394 U.S. 478.....	15
Bram v. United States, 168 U.S. 532.....	12
Bumber v. North Carolina, 391 U.S. 543.....	21
Cardwell v. Connecticut, 209 Va. 68,.....	23
Culombe v. Connecticut, 367 U.S. 568.....	22
Davis v. North Carolina, 384 U.S. 737.....	13

Fant v. Peyton, 303 F. Supp. 457	23
Filkes v. Alabama, 352 U.S. 197	15
Green v. United States, 355 U.S. 184	20
Hayes v. Cady, 500 F. 2d 1260	22
Hoover v. Beto, 439 F. 2d 912	20
Hughes v. Swenson, 452 F. 2d 866	15
Jackson v. Denno, 378 U.S. 368	15
Johnson v. Zerbst, 304 U.S. 458	20
Judd v. United States, 190 F. 2d 649	21
Kovach v. United States, 53 F. 2d 639	21
Malinski v. New York, 324 U.S. 401	23
Malloy v. Hogan, 378 U.S. 1	12
Miranda v. Arizona, 384 U.S. 436	15
Payne v. Arkansas, 356 U.S. 560	23
Reck v. Pate, 367 U.S. 433	14
Rogers v. Richmond, 365 U.S. 534	23
Schneckloth v. Bustamonte, 412 U.S. 218	22
Simmons v. Bomar, 349 F. 2d 365	21
Stroble v. California, 343 U.S. 181	23
Townsend v. Sain, 372 U.S. 293	14
United States v. Anzalone, 555 F. 2d 317 (2d Cir. 1977).....	8, 9, 12
United States v. DeMarco, 488 F. 2d 828.....	22
United States v. Dornblut, 261 F. 2d 949.....	20
United States v. Hardman, 480 F. 2d 649.....	15
United States v. Harris, 543 F. 2d 1247 (9th Cir. 1976).....	8
United States v. Harrison, 524 F. 2d 421 (D.C. Cir. 1975).....	12
United States v. Johnson, 525 F. 2d 999 (2d Cir. 1975).....	9
United States v. Marvin, 176 F. Supp. 262.....	20
United States v. Rothman, 492 F. 2d 1260.....	22

United States v. Schlafani, 265 F. 2d 408.....	20
United States v. Seagin, 459 F. 2d.....	15
United States v. Terrell, 474 F. 2d 872 (2d Cir. 1973).....	9

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No. 77-1265

UNITED STATES OF AMERICA,

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vs.

ZACHARY MARTIN, and
DENNIS MARTIN,

Appellants.

On Appeal from the United States District Court
for the Western District of New York

BRIEF ON BEHALF OF APPELLANTS

Issues Presented

1. Whether the destruction of F.B.I.'s rough interview notes denied Appellants' right under the Fifth and

Sixth Amendment to the Constitution given the facts of the case.

2. Whether the Appellants' drug intoxication at the time of the F.B.I. interview negated the apparent voluntariness of their statements.

PRELIMINARY STATEMENT

The Appellants were charged in a two-count indictment, filed in the United States District Court for Western District of New York, on the 20th day of January, 1977. The indictment charged a violation 18 U.S.C. 2113 (a) (2) and 18 U.S.C. 371. (A.1)*.

A suppression hearing was held in the United States District Court for the Western District of New York before the Hon. John T. Elfvin regarding the admissibility of statements attributed to Appellants. Following the denial of Appellant's motions to suppress, Appellants enter pleas of guilty to a violation of 18 U.S.C. 371,

fers to pages in Appendix.

however, Appellants preserved their right to appeal the suppression issue.

Thereafter, as of the 6th day of June, 1977, Appellant Zachary Martin was sentenced to a four (4) year term of imprisonment with credit for time already served awaiting trial, and on the 13th day of July, 1977, Appellant Dennis Martin was sentenced to three (3) years probation.

A timely notice of appeal was filed on behalf of Zachary Martin on the 6th day of June, 1977. A timely notice of appeal was filed on behalf of Dennis Martin on the 14th day of July, 1977.

STATEMENT OF FACTS

On the 26th day of November, 1977, the Manufacturers & Traders Trust Company branch bank at 1589 Hertel Avenue, Buffalo, New York was robbed. At approximately 12:00 o'clock noon of the same day, the Appellant, Dennis Martin, was picked up and taken to the bank for identification. He was later taken to Buffalo Police Headquarters

and eventually gave a statement with respect to his involvement in the robbery. At approximately 1:00 o'clock P.M. on the 26th day of November, 1977, the Appellant, Zachary Martin was apprehended and taken to the Buffalo Police Headquarters for questioning. The Appellant Zachary Martin eventually gave a statement indicating his involvement in the bank robbery. While both appellants executed Waiver of Rights forms and neither appellant gave a signed statement.

At the hearing held before the Hon. John T. Elfvin, United States District Judge for the Western District of New York, Special Agents James E. McGuigan and James L. Gotter testified with respect to the interviews they conducted on Zachary and Dennis Martin respectively. Both agents testified that they had very little experience in identifying drug addicts other than the most obvious symptoms of withdrawal. (A. 174-75; 202-04). They testified that the defendants appeared calm throughout

the interview. Agent Gotter testified that policy dictated if an Agent was interviewing an individual in obvious discomfort from narcotics, the interview should be terminated. (A. 202). Finally, both Agents testified that following the preparation of their 302 form they destroyed the rough notes of the interview in keeping with F.B.I. policy. (A: 177; 206).

With respect to the appellant, Zachary Martin, Agent McGuigan testified that following Martin's executing of the waiver of rights form, he gave a statement implicating himself and the other co-defendants in the bank robbery. The interview commenced at approximately 1:48 o'clock P.M. and terminated at 2:15 o'clock P.M. of the same day. Upon cross-examination, he revealed the interview took place on the 26th day of November, 1977; dictated from rough notes on the 29th; and typed on the 30th. Following the proof reading of the F.B.I. 302 to insure its conformity

with his rough notes, he destroyed his notes. Agent McGuigan admitted that Martin informed him he was a drug user but that he did not pursue the subject after Martin's admission. (A. 180). He further indicated on the 302 form that Martin had "track marks", needle marks, on his arm; indicating use of narcotic drugs. (A. 178-79). Despite these obvious indications of drug use, Agent McGuigan did not inquire of the defendant as to his last use of narcotics as it related to his ability to execute a voluntary conscious waiver. (A. 181).

The defendant, Zachary Martin, Arlethia Martin and Doris Stephens testified that at approximately 11:45 o'clock on the morning of the 26th day of November, 1977, Zachary Martin self-injected approximately six (6) or seven (7) syringes of a drug called Talwin. Arlethia Martin testified that drugs make Zachary forgetful. Zachary Martin also testified on direct examination that he had no recollection

of any of the events following his use of drugs until he appeared in the Magistrate's Court Room for his arraignment. (A. 213).

Special Agent James Gotter testified with respect to the statement he took from Dennis Martin. He testified that he advised Appellant Martin his constitutional rights and had him execute a waiver of these rights. Throughout the interview Dennis Martin never appeared to have the obvious signs of withdrawal. (A. 196). However, he recalled someone stating after the interview, that Zachary Martin was sick and that the other defendants were possibly coming down from drugs. (A. 201). By his own admission, Agent Gotter has had "a little bit" of experience identifying narcotics users. (A. 202). Dennis Martin's demeanor along with all the other defendants, surprised the Agent in that they appeared very calm and did not seem the least bit nervous. (A. 203). It is significant to note, that the

Agents limited training in identifying narcotics users has taught him that they exhibit a "I don't care attitude".

(A.204). Nevertheless, he continued the interview.

Appellant Dennis Martin testified on his own behalf that during the interview he was under the influence of narcotics having used Talwin earlier that day and he really did not understand what was happening during the interview, and thus did not consciously waive his constitutional rights. (A.223-226).

POINT I

THE DESTRUCTION BY THE F.B.I. OF THE ROUGH INTERVIEW NOTES DENIED THE APPELLANTS THE FULL PROTECTION AFFORDED THEM BY THE FIFTH AND SIXTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

While the circuits apparently disagree as to whether the F.B.I. must keep its rough interview notes, Accord, United States v. Anzalone, 555 F.2d 317 (2d Cir. 1977), Contra, United States v. Harris, 543 F. 2d 1247 (9th Cir. 1976), there can be no doubt that these notes contain potentially

valuable information for defendant and the Government alike, and the better policy is to retain them. United States v. Anzalone, supra.

This circuit has held that an F.B.I. Agent's written summary of a statement given to him by a defendant is discoverable under Rule 16 of the Federal Rules of Criminal Procedure. United States v. Johnson, 525 F. 2d 999 (2d Cir. 1975); and that tapes of conversations of a defendant and a non-government Agent were similarly discoverable under Rule 16. However, this Court has refused to adopt a blanket rule requiring disclosure of raw F.B.I. notes, United States v. Anzalone, 555 F. 2d 317 (2d Cir. 1977); United States v. Terrell, 474 F. 2d 872 (2d Cir. 1973), but instead seems to prefer a case by case examination.

In the instant case, production of the rough interview notes was imperative not for some fishing expedition, but rather to explore a particular issue. Both defendants have

questioned their ability to comprehend and voluntarily waive their constitutional rights under the Fifth and Sixth Amendments. Both defendants claimed to be under the influence of drugs during their F.B.I. interview. Their testimony as to their drug related activities prior to the interview is uncontested. It is significant that testimony of the F.B.I. agents supports the possibility of drug intoxication during the interview.

Of particular relevance here is that the drug issue was raised during cross-examination, and not directly referred to in either F.B.I. 302. Agent McGuigan did notice track marks on the defendant Zachary Martin's arm and recorded that fact in his formal 302, however, this is the only reference made in the 302 itself to Zachary Martin's drug problem. Agent James Gotter deleted any reference in Appellant Dennis Martin's 302 to drug involvement, despite the fact, that he later

recalled someone mentioning that the defendants were coming down from drugs sometime during the interview or arrest procedure. The agent admitted being surprised by the defendants' coolness and calmness under the pressure of an interview. However, he never related that to the "I don't care attitude", which his limited F.B.I. training should have told him that narcotic addicts sometimes assume.

It is obvious that what was considered significant by the defense, did not carry the same impact with the agents of the F.B.I. They were more willing to delete to narcotic addiction certain references from their notes when they prepared the 302. It was the destruction of those references contained in the rough notes of the F.B.I. which hampered the defense in its attempt to insure the defendants' Fifth and Sixth Amendment rights. The Second Circuit has recognized the Brady problems

implicit in the destruction of rough notes. United States v. Anzalone, supra; see, also United States v. Harrison, 524 F. 2d 421, (D.C. Cir. 1975), and those problems present themselves here, particularly when one defendant has no recollection of the events surrounding the interview, and the other no understanding.

POINT II

DUE TO THE APPELLANTS' DRUG
INTOXICATION, THEIR STATE-
MENTS WERE INVOLUNTARILY
GIVEN.

The basic legal principle which appears to be controlling the voluntariness, and therefore, admissibility of Appellant's confessions is the Fifth Amendment of the United States Constitution; the right against self-incrimination. This principle was stated in the case of Bram v. United States, 168, U.S. 532 which was cited in Malloy v. Hogan, 378 U.S. 1, 84, page 7. There the Court held that "in criminal trials, in the Courts

of the United States, wherever a question arises whether a confession is incompetent because (sic) not voluntary, the issue is controlled by that portion of the Fifth Amendment to the Constitution of the United States commanding that no person shall be compelled in any criminal case to be a witness against himself.

Justice Black, in Davis v. North Carolina, 384 U.S. 737, 740, state in furtherance of this position:

"The standard of voluntariness.....is..... a standard ground in the policies of the privilege against self-incrimination."

The fact pattern here is somewhat different from the classic cases of coerced confessions through physical and mental tortures. Here we are dealing with intoxication resulting from the use of self-induced drugs.

It is clear that the Appellants' inability to give a knowing and intelligent waiver of their "Miranda Rights" as well as any understanding of the

proceedings flowed from the voluntary abuse of drugs. However, the burden still remains on the Government to show that there was a waiver that would comply with Constitutional standards.

The fact that the Appellants were in a state of mind which was self-created, does not reduce the Government's burden to show a knowing and intelligent waiver.

"Numerous decisions of (the Supreme) Court have established the standards governing the admissibility of confessions into evidence."; If an individuals "will was overborne": (Reck v. Pate, 367 U.S. 433 at 440,) or if his confession was not the product of a rational intellect and free will, (Blackburn v. Alabama, 36 U.S. 199 at 208,) his confession is inadmissible because coerced. These standards are applicable..... to a drug induced statement." Townsend v. Sain, 372 U.S. 293.

Although in Townsend, the drug was given by the Police authorities to the defendant, the physical condition of that Defendant was the same as the appellants' herein. Their minds were of such a nature as to not

intelligently hear and understand what was being said to them. Whether the drug was self-induced or given by the Police is not relevant. What is relevant is the state of mind of the individual at the time he is being interrogated. See Jackson v. Denno, 378 U.S. 368.

"The proper test is whether the defendant knowingly and intelligently waived his right to counsel. A heavy burden rests on the Government to demonstrate this waiver." U.S. Hardman, 480 F. 2d 649; citing Miranda v. Arizona, 384 U.S. 436. "The issue is whether the defendant was effectively warned of his rights to counsel and that knowingly and intelligently declined to exercise them." U.S. v. Hardman, supra; U.S. Seggin, 459 F. 2d 182 (CA8, 1972); Hughes v. Swenson, 452 F. 2d 866 (CA8, 1971).

The Court in Hardman went on to say that: "We are not prepared to say that a confession made by a person under the influence of drugs is per se involuntary. It is suspect and a full and complete evidentiary hearing is necessary to a resolution of such an issue." U.S. v. Hardman, supra; Jackson v. Deno, 378 U.S. at 390-391.

The question of voluntariness necessarily turns on the totality of circumstances. Boulde v. Halman, 394 U.S. 478, (1969); Filkes v. Alabama, 352 U.S. 197

at page 197. In the instant case, there were clear warning signs to each F.B.I. Agent that the Appellants were not in the proper frame of minds to give a knowing and intelligent waiver of their "Miranda" rights.

In the case of Zachary Martin, he told Agent McGuigan he used drugs and Agent McGuigan substantiated this by observing needle marks in Zachary's arms. Instead of following good Police practice and inquiring as to the effects of these facts on the Appellant's ability to waive his rights, Agent McGuigan instead chose to disregard these warning signals and proceeded to obtain the statement.

It is clear from the totality of the facts here, especially when Agent Gotter testified that he heard the Appellants were beginning withdrawal symptoms, that the testimony of Zachary Martin is credible and in fact truthful.

The Appellant should not be held to a lower standard

of "voluntariness" because the F.B.I. Agents were not experienced in identifying a person under the influence of drugs. But even disregarding the lack of in-depth training, the reasonable Police Officer should have been alerted by the very obvious signs given by Zachary Martin.

Since both Agents who interviewed and interrogated Zachary Martin were present during the interview and interrogation of his brother, Dennis, caution with respect to drugs should have been observed during Dennis' interview. Although Agent Gotter testified that Dennis did not mention the use of drugs, it appears that either Gotter or McGuigan, based on the comments of Zachary Martin, should have raised the question.

Agent Gotter also should have realized the import of his observations of Dennis Martin. Gotter stated that Dennis appeared quite calm and that he did not perspire or seem nervous. This was a clear warning

that the Appellant was not in a proper frame of mind to knowingly and intelligently waive his "Miranda" rights. The reasonable Police Officer should be alerted not only to persons who demonstrate the obvious course of conduct, but to those who act unexpectedly under a given set of facts. Here is a person being confronted with the extremely serious crime of bank robbery and he was not showing signs of nervousness or perspiration. This was of sufficient importance to Agent Gotter that he took note of the fact. Yet he didn't follow through to find the cause of this unusual state of mind. Instead, Agent Gotter allowed Dennis to give a complete narrative of events. Gotter stated the statement was said in a coherent and calm manner.

"The 'coherency' standard, under which a confession would be admissible so long as the accused was capable of making a narrative of past events or of stating his own participation in the crime, is not a proper test of the admissibility of a confession made by a person under the influence of a drug." 29 Am.

Jur. 2d 578 at page 637.

The mere fact that statements were in fact given should not be the test to determine a knowing and intelligent waiver of the "Miranda" rights or even a determination that Appellants understood their rights. It is clear from a reading of the entire testimony of the F.B.I.

Agents that they shifted the burden of voluntariness to the appellants. In response to question after question

asked by the Government, the Agents took the position that since Appellants did not ask for a lawyer, did not refuse to be interrogated, and failed to state their lack of understanding of the proceedings, they must be acting knowingly and intelligently.

The cases clearly go the other way. The burden, and it is a heavy burden, is on the Government to show the voluntary waiver. As in consent searches under the Fourth Amendment, the presence of a Police Officer

at your home or being in the custody of the Police, often intimidates a person into consenting, but it is not a free and voluntary act. The burden to show a free and voluntary consent is great, but must be borne by the Government.

"...The Courts will...indulge every reasonable presumption against such a waiver" of the right not to consent to an illegal search. Amos v. U.S., 255 U.S. 313; U.S. v. Dornblut, 261 F. 2d 949; U.S. v. Sclafani, 265 F. 2d 408; U.S. v. Martin, 176 F. Supp. 262; Johnson v. Zerbst, 304 U.S. 458; Green v. U.S., 355 U.S. 184.

The burden of proving consent is on the prosecution and is not met by a mere showing of acquiescence to lawful authority. Hoover v. Beto, 439 F. 2d 913 at 919. A consent search will not be lightly inferred. Johnson v. Zerbst, 304 U.S. 458; Ringel, Searches and Seizures, Arrests and Confessions, Clark Boardman, 1922, p. 289;

"When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was in fact freely and

voluntarily given." Bumper v. North Carolina, 391 U.S. 543 at 546, 20 L. Ed.2d 797 at 802, 88 S. Ct. 1788. See also Wren v. United States, 352 F. 2d 617; Simmons v. Bomar, 349 F. 2d 365; Judd v. United States, 89 U.S. App DC 64, 190 F. 2d 649; Kovach v. United States, 53 F.2d 639.

In the instant case, we are also talking about the voluntary waiver of constitutional rights. It appears that the standard for a knowing and intelligent waiver of "Miranda Rights" should be held to a higher level than consent to search a person or property.

The waiver situation here is the same. One cannot conclude that because the statement was given, it was done so freely and voluntarily and after a proper waiver "Miranda Rights". The Government must show that the confessions obtained from the appellants herein were not done so because the Appellants were intimidated through being interrogated in Police Headquarters by members of the F.B.I. The fact appellants were in

Police custody is a significant factor to consider in determining voluntariness.

"...In considering whether the consent was voluntary, Police custody is a factor that must be considered, and the increased possibility of coercion increases the Government's burden of proof."

Ringel, Search, Seizures, Arrests and Confessions, P. 218 (supplement), Hayes v. Cady, 500 F. 2d 1212; U.S. v. Rothman, 492 F. 2d 1260, (9th Cir. 1973); U.S. v. DeMarco, 488 F. 2d 828, (2d Cir. 1973).

"The ultimate test (for admissibility of a confession) remains that which has been the only clearly established test in the Anglo-American Courts for two hundred years; the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process." Schneckloth v. Bustamonte, 412 U.S. 218 at 225; See also Culombe v. Connecticut, 367 U.S. 568.

A full and complete determination should have been made by the Agents once the warning signs were present. These vital signs were disregarded and statements were sought and obtained. A clear reading of the record indicates

there was no knowing and intelligent waiver of either Appellants' "Miranda Rights" and the statement obtained were not given freely and voluntarily.

"The record indicates clearly that these warnings (Miranda) were given to the (Appellants) at all times of the interrogation. We realize that it is one thing to give such warnings and another thing to understand them." Fant v. Peyton, 303 F. Supp. 457.

"Unless and until such warnings (Miranda) and waivers are demonstrated by the prosecution..., no evidence obtained as a result of interrogation can be used against him." Fant v. Peyton, supra, quoting Cardwell v. Connecticut, 209 Va. 68, 161 S.E. 2d 787 at 789 (1968).

In Jackson v. Denno, 378 U.S. 368, at page 376, the Court held that "a defendant in a criminal action is deprived of due process of law when his conviction is founded, in whole or in part, upon and involuntary confession without regard for the truth or falsity of the confession, Rogers v. Richmond, 365 U.S. 534, and even though there is ample evidence aside from the confession to support the conviction. Malinski v. New York, 324 U.S. 401; Stroble v. California,

343 U.S. 181; Payne v. Arkansas, 356 U.S. 560."

It appears clear from a reading of the complete record, that the Appellants were mentally incapable of knowingly and intelligently waiving their "Miranda Rights" and therefore, unable to give a confession which could be used against them.

The Trial Court erred in not suppressing the confessions as not being given freely and voluntarily.

CONCLUSION

Conviction should be reversed and the statements of the Appellants' suppressed.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA

Plaintiff-Appellee

-vs-

ZACHARY MARTIN and
DENNIS MARTIN

Defendant-Appellants

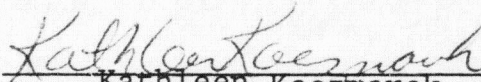
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Docket No. 77-1265

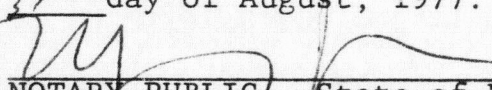
STATE OF NEW YORK]
COUNTY OF ERIE] SS.:
CITY OF BUFFALO]

KATHLEEN KACZMAREK being duly sworn deposes and says:

1. That your Deponent personally served the
Appendix and List of Exhibits for the Appeal herein upon the United
States Attorney for the Western District Court on August 31, 1977.


Kathleen Kaczmarek

Sworn to before me this
31st day of August, 1977.


NOTARY PUBLIC, State of New York
Qualified in Erie County
My Commission Expires: 3/30/78

STATE OF NEW YORK
COUNTY OF

OF

} ss.:

INDIVIDUAL VERIFICATION

, being duly sworn, deposes and says: that deponent is
the within action; that deponent has read the foregoing
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on
information and belief, and that as to those matters deponent believes it to be true.

born to before me, this day of , 19

My commission expires

Notary Public, Erie County, N. Y.; Commissioner of Deeds, Buffalo, N. Y.

STATE OF NEW YORK
COUNTY OF

OF

} ss.:

CORPORATION VERIFICATION

, being duly sworn, deposes and says: that deponent is of
the corporation named in the within action; that deponent has
and knows the contents thereof; that the same is true to deponent's own
knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.
is verification is made by deponent because is a corporation.
deponent is an officer thereof, to-wit its
deponent's knowledge are as follows: The grounds of deponent's belief as to all matters not stated upon

born to before me, this day of , 19

My commission expires

Notary Public, Erie County, N. Y.; Commissioner of Deeds, Buffalo, N. Y.

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the Courts of New York State, certifies that the within
has been compared by the undersigned with the original and found to be a true and complete copy.

TESTED:

AFFIRMATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the Courts of New York State, shows; that deponent(s) is (are) the attorney(s) of record
in the within action; that deponent has read the foregoing
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged on information
and belief, and as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and
by is that there is no officer presently in Erie County.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under penalties of perjury.

TESTED:

AFFIDAVIT OF PERSONAL SERVICE (WITH DESCRIPTION)

STATE OF NEW YORK
COUNTY OF

OF

} ss.:

, being duly sworn, deposes and says: that he (she) is over 18 years of age, and not a party to the
action; that he (she) served the annexed on the defendant

, named herein, by personally delivering to and leaving a true copy thereof with

on the day of , 19 , at A.M. (P.M.) at

and that he (she) knew the person so served to be the person described as the defendant therein.

The description of the person served above is: Sex ; Skin color ; Hair color ; Approx. age ;
Approx. weight ; Approx. height ; Other identifying features

On my best knowledge, information and belief the said defendant at the time of service was not engaged in the military service of the United States.

born to before me, this day of , 19

My commission expires

Notary Public, Erie County, N. Y.; Commissioner of Deeds, Buffalo, N. Y.

THE UNITED STATES OF AMERICA

Plaintiff-Appellee

-VS-

ZACHARY MARTIN and
DENNIS MARTIN

Defendant-Appellants

AFFIDAVIT
Docket No. 77-1265

GRASHOW, GREENFIELD & PALMER
ATTORNEY FOR
Defendants-Appellants

OFFICE, POST OFFICE ADDRESS AND TELEPHONE

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BUFFALO, NEW YORK 14203
(716) 854-1700
(716) 842-1100

INDEX NO.

TO:

PLEASE TAKE NOTICE that an _____, of which the within is a copy
was duly granted in the within-action on the _____ day of _____, 19____, and duly entered in the office of the Clerk of the
County of _____ on the _____ day of _____, 19____.

Yours, etc.,

GRASHOW, GREENFIELD & PALMER

ATTORNEY FOR

DUE AND PERSONAL SERVICE of the within paper(s) and of the Notice hereon endorsed is admitted this _____ day of _____, 19____
_____, Attorney(s) for _____

STATE OF NEW YORK
COUNTY OF _____

OF

ss.:

_____, being duly sworn, deposes and says: that deponent is not a party to this action and is over 18
years of age; that on the _____ day of _____, 19____, deponent served the within
upon, _____

in this action, at the above address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postp
properly addressed wrapper, in a official depository under the exclusive care and custody of the United States post office department within the
State of New York.

Sworn to before me, this _____ day of _____, 19____.

My commission expires _____
Notary Public, Erie County, N.Y.; Commissioner of Deeds, Buffalo, N.Y.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA

Plaintiff-Appellee

-vs-

ZACHARY MARTIN and
DENNIS MARTIN

Defendants-Appellants

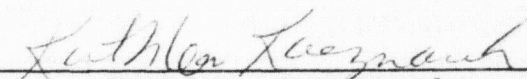
A F F I D A V I T

Docket No. 77-1265

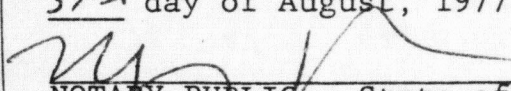
STATE OF NEW YORK]
COUNTY OF ERIE] SS.:
CITY OF BUFFALO]

KATHLEEN KACZMAREK being duly sworn deposes and says:

1. That your Deponent personally served two (2) copies of the Appellants' brief, for the Appeal herein, on the United States Attorney for the Western District of New York on July 31, 1977.


Kathleen Kaczmarek

Sworn to before me this
31st day of August, 1977


NOTARY PUBLIC: State of New York
Qualified in Erie County
My Commission Expires: 3/30/78

STATE OF NEW YORK
COUNTY OF

OF

ss.: }

INDIVIDUAL VERIFICATION

, being duly sworn, deposes and says: that deponent is
the within action; that deponent has read the foregoing
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on
information and belief, and that as to those matters deponent believes it to be true.
born to before me, this day of , 19

My commission expires

Notary Public, Erie County, N.Y.; Commissioner of Deeds, Buffalo, N.Y.

STATE OF NEW YORK
COUNTY OF

OF

ss.: }

CORPORATION VERIFICATION

, being duly sworn, deposes and says: that deponent is of
the corporation named in the within action; that deponent has
and knows the contents thereof; that the same is true to deponent's own
knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.
This verification is made by deponent because is a corporation.
Deponent is an officer thereof, to-wit its . The grounds of deponent's belief as to all matters not stated upon
deponent's knowledge are as follows:

born to before me, this day of , 19

My commission expires

Notary Public, Erie County, N.Y.; Commissioner of Deeds, Buffalo, N.Y.

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the Courts of New York State, certifies that the within
has been compared by the undersigned with the original and found to be a true and complete copy.

TESTED:

AFFIRMATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the Courts of New York State, shows; that deponent(s) is (are) the attorney(s) of record
in the within action; that deponent has read the foregoing
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged on information
and belief, and as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and
by is that there is no officer presently in Erie County.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under penalties of perjury.

TESTED:

AFFIDAVIT OF PERSONAL SERVICE (WITH DESCRIPTION)

STATE OF NEW YORK
COUNTY OF

OF

ss.: }

, being duly sworn, deposes and says: that he (she) is over 18 years of age, and not a party to the
action; that he (she) served the annexed on the defendant
, named herein, by personally delivering to and leaving a true copy thereof with
on the day of , 19 , at A.M. (P.M.) at

and that he (she) knew the person so served to be the person described as the defendant therein.

The description of the person served above is: Sex ; Skin color ; Hair color ; Approx. age ;
Approx. weight ; Approx. height ; Other identifying features

On my best knowledge, information and belief the said defendant at the time of service was not engaged in the military service of the United States.

born to before me, this day of , 19

My commission expires

Notary Public, Erie County, N.Y.; Commissioner of Deeds, Buffalo, N.Y.

THE UNITED STATES OF AMERICA

Plaintiff-Appellee

-VS-

ZACHARY MARTIN and
DENNIS MARTIN

Defendant-Appellants

AFFIDAVIT
Docket No. 77-1265

GRASHOW, GREENFIELD & PALMER
ATTORNEY FOR

Defendants-Appellants

OFFICE, POST OFFICE ADDRESS AND TELEPHONE

430 BRISBANE BUILDING
BUFFALO, NEW YORK 14203
(716) 854-1700
(716) 842-1100

TO:

PLEASE TAKE NOTICE that an _____, of which the within is a copy
was duly granted in the within-action on the _____ day of _____, 19____, and duly entered in the office of the Clerk of the
County of _____ on the _____ day of _____, 19____.

Yours, etc.,

GRASHOW, GREENFIELD & PALMER

ATTORNEY FOR

DUE AND PERSONAL SERVICE of the within paper(s) and of the Notice hereon endorsed is admitted this _____ day of _____, 19____
_____ Attorney(s) for _____

STATE OF NEW YORK
COUNTY OF _____

OF

ss.:
}

_____, being duly sworn, deposes and says: that deponent is not a party to this action and is over 18
years of age; that on the _____ day of _____, 19____, deponent served the within
upon, _____

in this action, at the above address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postp
properly addressed wrapper, in a official depository under the exclusive care and custody of the United States post office department within the
State of New York.

Sworn to before me, this _____ day of _____, 19____.

My commission expires _____

Notary Public, Erie County, N.Y.; Commissioner of Deeds, Buffalo, N.Y.

